

Mark C. Zauderer  
Jonathan D. Lupkin  
Kimberly Pallen  
FLEMMING ZULACK WILLIAMSON ZAUDERER LLP  
One Liberty Plaza, 35<sup>th</sup> Floor  
New York, NY 10006  
(212) 412-9500  
(212) 964-9200 (facsimile)  
mzauderer@fzwz.com  
jlupkin@fzwz.com  
kpallen@fzwz.com

Attorneys for Plaintiff GoSmile, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ECF CASE

----- x  
GOSMILE, INC., a Delaware  
corporation,

Plaintiff,

- against -

DR. JONATHAN B. LEVINE, D.M.D. P.C.,  
a New York Corporation; and DR. JONATHAN B.  
LEVINE, an individual,

Defendants.  
----- x

No. 10 CV 8663 (PKC)

**MOTION TO ADMIT  
COUNSEL *PRO HAC VICE***

PURSUANT TO RULE 1.3(c) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, I, Jonathan D. Lupkin, Esq., a member in good standing of the bar of this Court and an attorney with the firm Flemming Zulack Williamson Zauderer LLP, hereby move for an Order allowing the admission *pro hac vice* of:

Heather J. Macklin, Esq.  
BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP  
200 W. Madison Street, Suite 3900  
Chicago, Illinois 60606  
(312) 984-3100  
(312) 984-3150 (facsimile)  
Heather.macklin@bfkn.com

FILED  
U.S. DISTRICT COURT  
2010 DEC 14 PM 1:03  
S.D. OF N.Y.

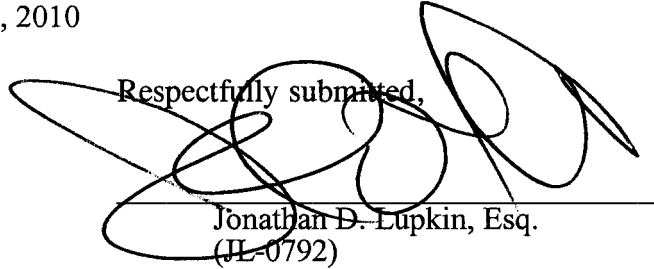
923537 825  
DEC 14 2010

Heather J. Macklin is a member in good standing of the Bar of the State of Illinois and is also admitted to practice before the Northern District of Illinois and the 7<sup>th</sup> Circuit.

There are no pending disciplinary proceedings against Heather J. Macklin in any State or Federal court.

Dated: New York, New York  
December 13, 2010

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end.

Jonathan D. Lupkin, Esq.  
(JL-0792)

FLEMMING ZULACK WILLIAMSON ZAUDERER LLP  
One Liberty Plaza, 35th Floor  
New York, New York 10006-1404  
Telephone: (212) 412-9500  
Facsimile: (212) 964-9200  
Email: jlupkin@fzwz.com

Mark C. Zauderer  
Jonathan D. Lupkin  
Kimberly Pallen  
FLEMMING ZULACK WILLIAMSON ZAUDERER LLP  
One Liberty Plaza, 35<sup>th</sup> Floor  
New York, NY 10006  
(212) 412-9500  
(212) 964-9200 (facsimile)  
mzauderer@fzwz.com  
jlupkin@fzwz.com  
kpallen@fzwz.com

Attorneys for Plaintiff GoSmile, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ECF CASE

----- X  
GOSMILE, INC., a Delaware  
corporation,

Plaintiff,

- against -

DR. JONATHAN B. LEVINE, D.M.D. P.C.,  
a New York Corporation; and DR. JONATHAN B.  
LEVINE, an individual,

Defendants.  
----- X

No. 10 CV 8663 (PKC)

**AFFIDAVIT OF JONATHAN  
D. LUPKIN IN SUPPORT OF  
MOTION TO ADMIT  
COUNSEL *PRO HAC VICE***

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

Jonathan D. Lupkin, being duly sworn, hereby deposes and says as follows:

1. I am a member of Flemming Zulack Williamson Zauderer LLP, counsel for Plaintiff in the above-captioned action. I am familiar with the proceedings in this case. I make this statement based on my personal knowledge of the facts set forth herein and in support of Plaintiff's motion to admit Heather J. Macklin as counsel *pro hac vice* to represent Plaintiff in this matter.

2. I am a member in good standing of the bar of the State of New York, and was admitted to practice law in 1993. I am also admitted to the bar, and am a member in good standing, of the United States District Court for the Southern District of New York.

3. I have known Ms. Macklin, a Partner at Barack Ferrazzano Kirschbaum & Nagelberg LLP, in Chicago, Illinois, for almost two years. She is a member in good standing of the Bar of the State of Illinois. A Certificate of Good Standing is attached hereto as Exhibit A.

4. Ms. Macklin is a skilled attorney and a person of integrity. She is experienced in federal practice and is familiar with the Federal Rules of Procedure.

5. Accordingly, I am pleased to move the admission of Heather J. Macklin, *pro hac vice*.

6. I respectfully submit a proposed order, which is attached hereto as Exhibit B, granting the admission of Heather J. Macklin, *pro hac vice*.

WHEREFORE it is respectfully requested that the motion to admit Heather J. Macklin, *pro hac vice*, to represent Plaintiff in the above-captioned matter, be granted.



JONATHAN D. LUPKIN  
(JL-0792)

Sworn to before me this  
13th day of December, 2010



Notary Public

**CRAIG KESCH**  
Notary Public, State of New York  
No. 02KE6199435  
Qualified in New York County  
Commission Expires January 12, 2013

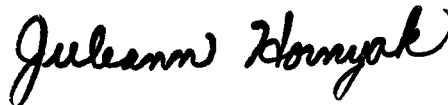
## **Certificate of Admission To the Bar of Illinois**

I, Juleann Hornyak, Clerk of the Supreme Court of Illinois, do hereby certify that

Heather Joy Macklin

has been duly licensed and admitted to practice as an Attorney and Counselor of Law within this State; has duly taken the required oath to support the CONSTITUTION OF THE UNITED STATES and of the STATE OF ILLINOIS, and also the oath of office prescribed by law, that said name was entered upon the Roll of Attorneys and Counselors in my office on November 4, 1999 and is in good standing, so far as the records of this office disclose.

In Witness Whereof, I have hereunto  
placed my hand and affixed the seal  
of said Supreme Court, at Springfield,  
in said State, this Tuesday, November 30, 2010.

A handwritten signature in black ink, reading "Juleann Hornyak". The signature is written in a cursive, flowing style.

Clerk

Heather J. Macklin, Esq.  
BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP  
200 W. Madison Street, Suite 3900  
Chicago, Illinois 60606  
Telephone: (312) 984-3100  
Facsimile: (312) 984-3150  
Email: [heather.macklin@bfkn.com](mailto:heather.macklin@bfkn.com)

is admitted to practice *pro hac vice* as counsel for Plaintiff GoSmile, Inc. in the above-captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court, including the Rules governing discipline of attorneys. If this action is assigned to the Electronic Case Filing (ECF) system, counsel shall immediately apply for an ECF password at [nysd.uscourts.gov](http://nysd.uscourts.gov). Counsel shall forward the *pro hac vice* fee to the Clerk of Court.

Dated: New York, New York  
December \_\_, 2010

---

P. KEVIN CASTEL  
United States District Judge

CERTIFICATE OF SERVICE

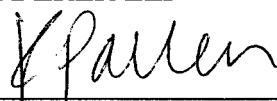
I certify that I am over 18 years of age and not a party to this litigation. I further certify that on December 14, 2010, I caused a true copy of the **AFFIDAVIT OF JONATHAN D. LUPKIN IN SUPPORT OF MOTION TO ADMIT COUNSEL PRO HAC VICE, MOTION TO ADMIT COUNSEL PRO HAC VICE AND ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION** for Heather Macklin, Esq. upon the following individuals via overnight mail:

Joshua Krakowsky, Esq.  
Davidoff Malito & Hutcher LLP  
605 Third Avenue  
New York, NY 10158  
[jsk@dmlegal.com](mailto:jsk@dmlegal.com)

Kyle C. Bisceglie, Esq.  
Olshan Grundman Frome Rosenzweig & Wolosky LLP  
Park Avenue Tower  
65 East 55th Street  
New York, NY 10022  
[Kbisceglie@olshanlaw.com](mailto:Kbisceglie@olshanlaw.com)  
Attorneys for Defendants

Dated: December 14, 2010

FLEMMING ZULACK WILLIAMSON  
ZAUDERER LLP

By:   
\_\_\_\_\_  
Kimberly A. Pallen (KP-8112)

One Liberty Plaza  
New York, New York 10006  
Tel: (212) 412-9500  
Fax: (212) 964-9200  
Email: [kpallen@fzwz.com](mailto:kpallen@fzwz.com)

Attorneys for Plaintiff GO SMILE, Inc.